

Case 6937

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of :
D. J. Pung et al. : Confirmation No. 2420
Serial No. 09/186,902 : Group Art Unit : 1771
Filed November 6, 1998 : Examiner : Jeremy R. Pierce

For: Personal Cleansing Wipe Articles Having Superior Softness

APPEAL BRIEF

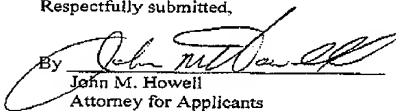
Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Enclosed, pursuant to 37 CFR 1.192(a), is Appeal Brief for the above application. The Brief is being forwarded in triplicate.

We believe the fee for the Appeal Brief was already charged and no fee is now due. If, however, there is a fee due, please charge the fee pursuant to 37 CFR 1.17(c) to Deposit Account No. 16-2480 for the filing of the brief in support of an appeal. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

By 
John M. Howell
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Registration No. 33,713
(513) 626-3792

November 18, 2003

Customer No. 27752

(BriefonAppealTrans.doc)
(Last Revised 10/01/01)

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APPELLANT'S BRIEF

Box AF
Assistant Commissioner for Patents
Washington, D.C. 20231
Dear Sir,

This is responsive to the Notification of Non-Compliance with the Requirements of 37CFR 1.192(c) mailed on October 22, 2003 (copy attached) in the above-captioned application, setting a one (1) month period for November 22, 2003. This Appellant's Brief is being filed in triplicate.

REAL PARTY IN INTEREST

This Application has been assigned to The Procter & Gamble Company of Cincinnati, Ohio. The Inventor(s), David John Pung, Steven Kirk Hedges, Frank Lin, and Marcus Wayne Evans, assigned his/her/their interest to the Procter & Gamble Company in an assignment corresponding to application Serial No.09/186,902, filed November 6, 1998 (recorded on May 30, 2000, at reel number 10855, and frame number 41?).

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences known to the Appellant, or known to Appellant's legal representative, that will directly affect the Board's decision in the present appeal.

STATUS OF CLAIMS

The present application was filed under 35 USC 371. The application was originally filed with claims 1-14. Claims 15-21 were added by an amendment on October 11, 2001. Claims 8, 18 and 19 were amended in an amendment on October 1, 2003. Claims 5, 6, 7, 9, 10 and 17 have been canceled. An amendment mailed on February 6, 2003 has not been entered by the Examiner,

for reasons stated in the February 14, 2003 Advisory Action. Claims 1-4, 8, 11-16 and 18-21 are pending and are finally rejected.

Appellant appeals the final rejection of December 6, 2002 (the Notice of Appeal for these claims was mailed on March 3, 2003 and received by the Office on March 3, 2003). A complete copy of the appealed claims is set forth in the Appendix.

STATUS OF AMENDMENTS

Appellant's amendment after final mailed on February 6, 2003 was entered due to reasons of record in the February 14, 2003 Advisory Action. The Examiner states that this amendment does not place the application in condition for allowance. Appellant's amendment under 37 CFR §1.116 mailed on October 1, 2003 was entered in the October 29, 2003 Advisory Action. The Examiner states that this amendment does not place the application in condition for allowance.

SUMMARY OF INVENTION

The present invention relates to a personal cleaning wipe article that has excellent cleansing properties with good comfort due to softness provided through the combination of the substrate and the cleansing composition that's coated or impregnated on to the substrate. The combination of the cleansing composition at a level from about 100% to about 400% by weight of the substrate and the three-dimensional substrate provides a wipe article that is effective in terms of cleansing the skin without causing undue irritation of the skin.

ISSUES

Whether the Examiner has provided sufficient motivation to combine the varied references cited in this case to properly support a prima facie case for obviousness.

GROUPING OF CLAIMS

Claims 1-4, 8, 11-16 and 18-21 stand together.

ARGUMENTS

The pending claims have been rejected under 35 USC §103(a) as being unpatentable over Manning et al., U.S. 4,755,421, in view of James et al., U.S. 5,674,591, Gordon et al., U.S. 5,763,332 and Pregozen, U.S. 5,141,803, for reasons of record.

The Applicants respectfully submit that in order for a rejection under 35 USC § 103 to stand, the Examiner must provide teaching or at minimum a suggestion in the cited references that would provide the motivation to one with ordinary skill in the art to combine the references to arrive at the Applicants claimed invention. "Measuring a claimed invention against the standard established by section 103 requires the oft-difficult but critical step of casting the mind back to the time of the invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field." *In re Dembiczak* 175 F. 3d

994, 999 (Fed. Cir. 1999), citing *W. L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553 (Fed. Cir. 1983). New combinations of known elements can be the basis of a new patent. However, when determining whether a new combination of known elements would be obvious to one of ordinary skill depends on various factors including whether the elements exist in analogous art. If the elements exist in analogous art, one must determine "whether the teachings of the prior art taken as a whole would have made obvious the claimed invention." See *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991). "The citing reference that merely indicate that isolated elements and/or features recited in the claims are known is not sufficient basis for concluding that the combination of claimed elements would be obvious." See *Ex parte Hyamizu*, 10 U.S.P.Q. 2D (BNA) 1393, 1394 (1988). There should be something in the prior art or a convincing line of reasoning in the answer suggesting the desirability of combining the reference in such a manner as to arrive at the claimed invention. Note *In re Dembiczak* 175 F. 3d 994, 999 (Fed. Cir. 1999).

Gordon teaches that greater than 2% of an anionic surfactant cannot be present in the emulsion, this teaches away from the present application and one must take the reference as a whole and not selectively choose elements in determinations of obvious rejections. James does not teach or suggest any use for the prospective substrate and without this suggestion or modification one of ordinary skill in the art would not be motivated to combine the teachings with the other cited art to arrive at the present application. Manning prepares the substrate by conventional wet laying techniques that the present application specifically teaches will not produce the desired substrate. "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability ... the essence of hindsight." *In re Dembiczak* 175 F. 3d 994, 999 (Fed. Cir. 1999), citing, *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 U.S.P.Q. (BNA) 543, 547 (Fed. Cir. 1985). "The best defense, against the subtle but powerful attraction of a hindsight-based obviousness analysis, is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references." *In re Dembiczak* 175 F. 3d 994, 999 (Fed. Cir. 1999), citing, *Interconnect Planning Corp. v. Feil*, 774 F.2d 1132, 1138, 227 U.S.P.Q. (BNA) 543, 547 (Fed. Cir. 1985). The Applicants respectfully request that the Examiner take into consideration the discussed caselaw in determinations of obvious rejections in the present application.

The Manning reference prepares the substrate by "conventional wet-laying techniques." (See column 5, line 30). The Manning reference fails to disclose a personal cleansing wipe with raised fibrous regions that have an average base weight ranging from about 40 to about 90 grams per square meter and a caliper ranging from about 0.3 to about 1.05 millimeters. The specific density is required of the present invention to allow the substrate to have the beneficial

feel and effectiveness. The examiner states that although Manning does not specifically disclose such criticalities, a cleansing wipe would inherent cover such limitations. No satisfactory support for this conclusion has been given. Furthermore, Manning does not teach or disclose that the claimed wipe articles contain raised fibrous regions. The present invention requires that the raised fibrous regions have an average base weight from 40 to about 90 grams per square meter and a caliper ranging from about 0.3 to about 1.05 millimeters. One of ordinary skill in the art would have no motivation to combine any reference with Manning to arrive at a wipe that contains raised fibrous regions that exhibit the average base weight and caliper range and is the personal cleansing wipe of the present invention.

The James reference is specifically directed toward the ability to place a textured design in a fabric. James does not suggest or teach the use of this fabric as a substrate that contains a cleansing composition that can be coated or impregnated into the substrate. Indeed, there is no disclosure in James regarding any prospective use of his substrate. Since there is no suggestion or motivation in James to place a cleansing composition with the substrate and Manning provides no motivation to one skilled in the to add a cleansing composition to a substrate that contains raised fibrous regions, there is no motivation to combine these references.

Gordon discloses a substrate that is conventional tissue paper. (See column 21, line, 35-36). The Examiner cites Gordon for teaching wet-like cleaning wipes and anionic detergent surfactants. The Examiner agrees that Gordon warns from using significant levels of anionic surfactant, but asserts that it does not teach away. The Examiner states that Gordon teaches anionic surfactants up to 2%, which the examiner finds to be within the Applicants' range which is 0.5 to 12.5% cleansing surfactant. However, when one reads the text of the Gordon reference, it teaches that anionic surfactants "cannot be present in the emulsion at significant levels (e.g., greater than 2% of the internal polar phase) because they can cause premature disruption of the emulsion." (See column 17, lines 47-50). This teaching would lead one of ordinary skill in the art away from use of such ingredients. The present invention is directed to a non-embossed, non-woven substrate formed from hydroentangled fibers. Gordon does not teach or suggest the use of the present invention's substrate and provides no motivation for one of ordinary skill in the art to use the wipe of Gordon combined with the prior discussed art to arrive at the present invention.

The wipe of Pergozen is processed into a uniform web by a carding machine. (See Column 6, lines 47-48). Like Manning, the Pergozen-made web would not have the raised fibrous regions of the present invention. Manning, James and Gordon all fail to specifically provide the content of the other elements of the cleansing composition. For this the Examiner cites Pergozen, which discloses an aqueous composition for impregnating a nonwoven wipe having a pH of from 3.5 to 4.5. The Pergozen reference relates specifically to the use of cationic

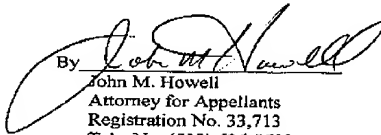
biocides to preserve the integrity of wipes during storage to provide antibacterial properties to mostly hard surfaces. The Pergozen reference fails to disclose or suggest the addition of 1% to about 60% of a drying agent that provides for softer, smoother skin feel, with less stickiness. There is no teaching or suggestion that the additional elements disclosed in Pergozen be incorporated into a composition that is coated onto or impregnated into a non-embossed substrate. Therefore, without this suggestion one of ordinary skill in the art would not be motivated to combine the components of Pergozen with the cited references to arrive at the present application.

SUMMARY

In view of all of the above, Appellant respectfully submits that Claims 1-4, 8, 11-16 and 18-21 are nonobvious over the prior art of record and any combination thereof.

Respectfully submitted,

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Nov 18, 2003

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LAST REVISED 5/21/02